

Commonwealth of Massachusetts
County of Essex
The Superior Court

JUN 30 2008

CIVIL DOCKET#: ESCV2007-00774-A

RE: Murphy v Civil Service Commission et al

TO: Robert L Quinan Jr, Esquire
Mass Atty General's Office
1 Ashburton Place
Room 2019
Boston, MA 02108-1698

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2008 JUL -2 A 10:00
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

NOTICE OF DOCKET ENTRY

You are hereby notified that on **06/27/2008** the following entry was made on the above referenced docket:

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS: It is therefore ORDERED that the plaintiff, Paul R. Murphy's, Motion for Judgment on the pleadings in his appeal of the Civil Service Commission's final decision be DENIED. It is further ORDERED that the Civil Service Commission's final decision be AFFIRMED. (Thomas Murtagh, Justice). Copies mailed 6/27/08

Dated at Salem, Massachusetts this 27th day of June,
2008.

Thomas H. Driscoll Jr.,
Clerk of the Courts

BY: Judith Brennan / Carlotta McCarthy Patten
Assistant Clerk

Telephone: (978) 744-5500 ext. 414 (Brennan) or 377 (Patten)

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**Commonwealth of Massachusetts
County of Essex
The Superior Court**

CIVIL DOCKET# ESCV2007-00774

RE: Murphy v Civil Service Commission et al

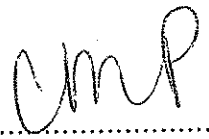
TO: Robert L Quinan Jr, Esquire
Mass Atty General's Office
1 Ashburton Place
Room 2019
Boston, MA 02108-1698

NOTICE OF JUDGMENT ENTRY

This is to notify you that a judgment in the above referenced action has been entered on the docket. A copy of the judgment is attached.

Dated at Salem, Massachusetts this 27th day of June,
2008.

Thomas H. Driscoll Jr.,
Clerk of the Courts

BY: 
Judith Brennan / Carlotta McCarthy Patten
Assistant Clerk

Telephone: (978) 744-5500 ext. 414 (Brennan) or 377 (Patten)

Commonwealth of Massachusetts
County of Essex
The Superior Court

CIVIL DOCKET# ESCV2007-00774

Paul R Murphy
Plaintiff

vs

Civil Service Commission, City of Salem, Salem Police Department,
Robert Chief St. Pierre, and Stanley Usovicz
Defendants

JUDGMENT

This action came on before the Court, Thomas Murtagh, Justice, presiding, on plaintiff's motion for judgment on the pleadings pursuant to G.L. c. 30A in connection with the decision of the defendant, Civil Service Commission's. After hearing and consideration, and the Court having denied plaintiff's motion,

It is **ORDERED** and **ADJUDGED**:

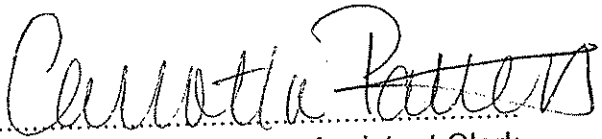
That the Complaint of the plaintiff be and hereby is DISMISSED.

It is further **ORDERED** and **ADJUDGED**:

That the Decision of the defendant, Civil Service Commission, be AFFIRMED.

Dated at Salem, Massachusetts this 27th day of June, 2008.

Thomas H. Driscoll Jr.,
Clerk of the Courts

By: 
Assistant Clerk

Copies mailed 06/27/2008

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COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

ESSEX, ss.

CIVIL ACTION
NO. 07-774

PAUL R. MURPHY

vs.

CIVIL SERVICE COMMISSION & others¹

MEMORANDUM OF DECISION AND ORDER ON
PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

The plaintiff, Paul R. Murphy (Murphy), has filed this appeal under G. L. c. 30A, § 14, and G. L. c. 31, § 44, for judicial review of the defendant, Civil Service Commission's, final decision, which dismissed Murphy's civil service appeal of the termination of employment as captain and executive officer of the Salem Police Department. Currently before the Court is Murphy's motion for judgment on the pleadings. After review of the record, and for the following reasons the plaintiff's motion is **DENIED**.

STATEMENT OF FACTS

The facts, as found by the Civil Service Commissioner, are as follows. Murphy was a tenured civil service employee of the Salem Police Department (Department), and had been employed for approximately twenty-nine years until his termination on September 9, 2003.

¹ City of Salem, Salem Police Department, Chief Robert St. Pierre, and Stanley Usovicz.

Murphy began his career as a patrol officer in 1974, and through a series of promotions rose to the rank of captain and executive officer, the most senior position in the Department after the police chief.

Police Chief Robert St. Pierre (Chief St. Pierre), also started as a patrol officer in 1974, on the same day as Murphy, and worked his way up the ranks to the position of police chief. For most of their careers, Chief St. Pierre and Murphy had a good professional relationship.

In 1996, Murphy's daughter, Patricia Murphy, became a reserve officer with the Department, and eventually became a permanent patrol officer in 2001. Patricia Murphy filed a sexual harassment complaint against two senior officers in the Department in April 2002.

In June 2002, Murphy met with Chief St. Pierre and spoke about his daughter's sexual harassment complaint. Murphy alleged bias by Lieutenant Butler who was conducting the investigation into the complaint. During the conversation Murphy referenced a certain letter in the investigative file pertaining to the complaint that Murphy claimed his daughter never received. Chief St. Pierre questioned Murphy about his knowledge of the letter if Patricia Murphy had never received it. Murphy divulged to the Chief that he had been in Lieutenant Butler's office examining the files related to his daughter's complaint.

Concerned that Murphy had personally involved himself in a matter relating to his daughter, including going through the files of Lieutenant Butler, Chief St. Pierre placed Murphy on paid administrative leave on June 11, 2002 (the first paid administrative leave), pending the completion of an internal investigation. Captain Tucker was assigned to conduct the investigation. In November 2002, Captain Tucker completed his investigation regarding Murphy's involvement in personnel issues relating to his daughter, and submitted his report to the

Chief. The report stated, "[t]he actions of Captain Murphy detailed in this administrative review call into serious question whether he crossed the line from carrying out his duties as a senior command officer to inappropriately carrying out a personal mission for a family member."

As a result of the internal investigation Chief St. Pierre issued a written reprimand to Murphy, and he was returned to duty on December 10, 2002. Based on advice from then-Mayor Stanley Usovicz (Usovicz) and the city solicitor, Chief St. Pierre forwarded the investigative report to the Commonwealth of Massachusetts State Ethics Commission on February 4, 2003. The State Ethics Commission completed a review into the matter, which was resolved by way of a public-disposition agreement dated June 22, 2005. As part of that agreement Murphy acknowledged violating the Commonwealth's conflict of interest laws and agreed to pay a fine of \$6,000.

Concurrent and subsequent to the first paid administrative leave, Murphy had conversations with and gave correspondence to Usovicz. During testimony before the Commission, Usovicz recalled talking with Murphy during a retirement party in the Fall of 2002, while Murphy was still on paid administrative leave. Usovicz testified that he told Murphy "we'd like to see you back at work." Then in November 2002, Usovicz saw Murphy at a city council meeting, and Murphy asked Usovicz if they could talk over coffee. Usovicz and Murphy met the next morning at a local coffee shop. Usovicz testified that Murphy talked about his disagreement with Chief St. Pierre concerning what Murphy had interpreted as inconsistent disciplinary actions within the Department by the Chief. Usovicz did not believe that he informed Chief St. Pierre about this meeting with Murphy.

Through the union-grievance procedure Murphy appealed the reprimand he had received

as a result of his inappropriately carrying out a personal mission for a family member to Usovicz.

Usovicz decided that the reprimand should be removed from Murphy's personnel file after a one-year period.

On January 30, 2003, Murphy attended a city council meeting and handed Usovicz a fifteen-page document. The first page was titled, "Chief Robert St. Pierre; Violations of City Ordinances and the Revised Rules and Regulations of the Salem Police Department." The fifteen-page document prepared by Murphy was a scathing attack on Chief St. Pierre's tenure, accusing the Chief of disparate treatment and personal wrongdoing, and specifically protesting the written reprimand that he had received from the Chief. The document made references to the lack of discipline over the years against one of the superior officers who was the subject of Murphy's daughter's sexual harassment complaint. Usovicz testified that upon receiving the document from Murphy, he was "dismayed that there was turmoil at the police department." Usovicz forwarded the document to the city solicitor and to Chief St. Pierre.

On March 4, 2003, Usovicz received another letter from Murphy that chastised Usovicz for not calling him in response to the fifteen-page document he had given to Usovicz on January 30, 2003. Murphy's letter stated in part,

"I have purposely not revealed the information I have to the press because its release will spawn numerous lawsuits against the city and it will embarrass the Department and the City. If you continue to ignore the fact that there is corruption in the police department, by not at least talking to me and seeing the information I have, I will be forced to go to the press and reveal what I know."

Based on advice received from the city solicitor, Usovicz subsequently appointed an independent investigator to investigate the allegations Murphy made against Chief St. Pierre. Usovicz testified that he viewed the letter of March 4, 2003, as a threat and viewed Murphy's

overall actions as a "vendetta" against Chief St. Pierre meant to "harm a long and distinguished career."

On April 15, 2003, Murphy left a letter for Chief St. Pierre. The letter stated,

"It is in your best interest to have a frank, off the record, talk with me about your future with the department. I am giving you an opportunity to talk to me, before I do what I have to do, an opportunity that was never offered to me. If I don't receive an answer by Thursday, your future with the department and your reputation will be in great peril."

Chief St. Pierre gave a copy of this letter to Usovicz and the district attorney's office, and was advised not to meet with Murphy.

On May 22, 2003, Murphy filed a criminal complaint against Chief St. Pierre alleging that the Chief "did knowingly file an application for a license to possess a machine gun containing false information." Murphy testified that he began his investigation against Chief St. Pierre regarding the firearms license in April 2003. According to Murphy, his investigation began after he was checking the Department's database to find out the Chief's date of birth to determine the Chief's likely retirement date. While searching the Department's database for the date of birth, Murphy noticed that the Chief was able to carry a machine gun because the license indicated that the Chief was a licensed firearms instructor. Knowing that the Chief was not a licensed firearms instructor Murphy filed the criminal complaint against the Chief. As part of his investigation into Chief St. Pierre's firearms license application, Murphy accessed the physical records at the Department and made copies of the license documents in the files.

The criminal complaint was dismissed by a magistrate in Charlestown District Court on June 24, 2003. The magistrate ruled, "No Process to Issue; Insufficient evidence having been presented." A license to carry any kind of firearm by a police officer is not required as the

authority to carry weapons arises from the powers of a chief of police. G. L. c. 41, § 98.²

Murphy believed that the issue of the Chief's firearms license showed that the Chief was not holding himself to the same standard to which he held other police officers. Specifically, Murphy alleged a former police officer's employment with the Department was terminated for providing false information in an application for a gun license. Murphy sought to obtain information about the former police officer as part of his complaint against the Chief. Chief St. Pierre testified that the former police officer was terminated as a result of missing money from the union fund and maintaining residency in two states.

On June 2, 2003, Murphy went to the Criminal Investigation Division of the Department, and asked for certain files on the former police officer that were kept in locked storage. The officer on duty in that division, Sergeant Griffin, retrieved the files for Murphy. Sergeant Griffin testified that he had felt Murphy's asking for the files was an order from a superior officer and he did not deem it to be an illegal order. Murphy then told Sergeant Griffin that he was taking copies of certain papers concerning the former police officer. After Murphy had taken the copies and left, Sergeant Griffin notified Captain Tucker, who was out of the building at the time. Captain Tucker was the officer in charge of the Criminal Investigation Division and responsible for the files. Sergeant Griffin also notified Captain Comeau who was on duty in the station house.

Captain Tucker in turn informed Chief St. Pierre of Murphy's actions in taking copies of internal affairs' investigative documents. At the request of the Chief, Captain Comeau met with

² "They [chief and other police officers] may carry within the commonwealth such weapons as the chief of police or the board or officer having control of the police in a city or town shall determine; . . . " G. L. c. 41, § 98.

Murphy and told him that he had spoken with the Chief, and that the Chief wanted the copies of materials returned. Captain Comeau testified that Murphy responded, "You can't have it." Murphy then asked if the Chief was ordering him to return the papers. Captain Comeau testified that he told Murphy the Chief was ordering it, to which Murphy replied, "He can't have it; he better be careful."

Next in the sequence of events of June 2, 2003, was a written order by Captain Tucker. Captain Tucker as the "Officer in Charge of the Internal Affairs Division" directed Murphy to return the files he had taken concerning the former police officer from the internal affairs' records. Murphy refused. Murphy was more senior than Captain Tucker in rank.

At this point, Chief St. Pierre by letter to then-Mayor Usovicz informed the Mayor that Murphy was "searching the records of the Department for information that does not appear to be related to his duties as a police officer for the City of Salem, but rather for the purpose of furthering his personal interests as perhaps that of his daughter." Chief St. Pierre further stated in the letter, "I desire to avoid the appearance of a conflict of interest and therefore, delegate to you my powers granted me as the appointing authority for all personnel matters concerning Captain Murphy."

Thereafter, Usovicz summoned Murphy to his office in the presence of Captains Tucker, Callahan, and Comeau, and suspended Murphy with pay (the second paid administrative leave) pending the outcome of an internal investigation. Murphy was given a letter from the Mayor stating in part,

"It is alleged that you violated the rules and regulations of the Salem Police Department. I am, therefore, ordering an internal investigation of this matter. Pending the results of that investigation, I am suspending you from performing all police

functions until further notice. You are being suspended with pay, however, that is subject to change pending the outcome of this investigation."

Captain Tucker conducted the internal investigation into Murphy's actions and the various allegations which Murphy had made against the Chief. Captain Tucker submitted his report to the Mayor on July 23, 2003. Except for a 1984 incident relating to the Chief giving seized pills to an ill cancer patient, Captain Tucker found no grounds supporting Murphy's allegations. As to Captain Tucker's investigation into Murphy's actions, the results became the basis for the allegations that the city would make against Murphy in its disciplinary hearing notice.

The independent investigator appointed by the Mayor to investigate the allegations made by Murphy in his fifteen-page document of January 2003, submitted a report on July 31, 2003. This independent report reached the same conclusions as Captain Tucker concerning the allegations made against the Chief. The report stated, "none of the allegations and accusations leveled at the Chief have any merit with the exception of a transgression in 1984 when he gave pain medication to a colleague who was suffering from cancer." The independent investigator was not charged with investigating Murphy's actions.

On August 8, 2003, the Mayor sent Murphy a letter informing him of a disciplinary hearing to be held on August 27, 2003, to "determine what disciplinary action, if any, that I should take, up to and including your discharge from your position." The letter also stated, "for a full explanation of your rights, please find enclosed copies of" G. L. c. 31, §§ 41-45. The letter outlined ten allegations against Murphy, with the tenth being dropped during the Commission hearing. Included with the letter was a copy of the Internal Investigation Report of Captain Tucker.

The allegations made against Murphy were,

- "1. Revised Rules and Regulations, Section I, Part D, Paragraph 8 - Use of Official Position.
In an ongoing pattern, you have used your position for personal gain by gaining access to departmental records in furtherance of retaliation against the Chief of Police, Robert St. Pierre for his placing you on administrative leave on June 11, 200[2], and subsequent filing of charges of Conflict of Interest against you with the Massachusetts State Ethics Commission. In addition, such actions were also taken in an attempt to influence the outcome of an internal investigation involving your daughter, Officer Patricia Murphy.
2. Revised Rules and Regulations, Section I, Part E, Paragraph 7 - Effectiveness of Orders.
Your refusal to follow orders given you on June 2, 2003 to return certain papers taken from a restricted area (Internal Investigations) which was under the exclusive control of the Detective Division.
3. Revised Rules and Regulations, Section I[,], Part F, Paragraph 30 - Submitting Reports, and Paragraph 35 - Complaints.
On May 22, 2003 you failed to follow department procedures in filing a criminal complaint against Chief Robert St. Pierre.
4. Revised Rules and Regulations, Section I, Part G, Paragraph 10 - Incompetence.
Whether in connection with your seeking a criminal complaint against Chief Robert St. Pierre on May 22, 2003, you demonstrated a lack of knowledge of the application of laws required to be enforced.
5. Revised Rules and Regulations, Section I, Part G, Paragraph 1 - Conduct Unbecoming an Officer.
In bringing a criminal complaint against Chief Robert St. Pierre, you engaged in an effort to bring discredit to the Department.
6. Revised Rules and Regulations, Section I, Part G, Paragraph 12 - Insubordination.
On June 2, 2003, you disobeyed orders to return documents to the Internal Affairs Section of Detective Division.
7. Revised Rules and Regulations, Section I, Part G, Paragraph 18 - Official Information, Dissemination.
By taking original papers in May 2003 relative to the gun permits issued to Chief St. Pierre and other internal affair documents relating to former Police

Officer Gray, you violated subsections a [through] e of paragraph 18.

8. Revised Rules and Regulations, Section I, Part G, Paragraph [23] - Public Statements.

By participating in interviews with a reporter from the Salem News, you released information relative to [your] seeking a criminal complaint against Chief St. Pierre and alleging other corruption within the Department.

9. Revised Rules and Regulations, Section I, Part G, Paragraph 1 - Conduct Unbecoming an Officer.

During November 2002, to June 2003, you attempted to threaten and coerce the Mayor and the Chief by alleging corruption in the Department and that you were going to the press unless each met with you, when you had an ongoing duty not to withhold such evidence."

On September 5, 2003, Mayor Usovicz conducted the disciplinary hearing. The only testifying witness was Captain Tucker, who had conducted the internal affairs' investigation into Murphy's actions. On September 9, 2003, Mayor Usovicz sent Murphy a letter stating,

"There being no other witnesses (other than Captain Tucker), and in that I find Captain Tucker to be creditable, I accept the findings of fact contained in his report and adopt them as my findings. Having done so, and having fully reviewed those facts, I have concluded that you have violated the Rules and Regulations of the Department as set forth in the August 8, 2003, Notice of Hearing. In so concluding and in further considering that you, as Senior Captain, being second in command, have by your conduct, attempted to undermine the authority and reputation of the Chief of Police. Such actions on your part are most grievous. Because of the grave impact that your conduct has upon the day to day operations of the Department, I have no other reasonable course of action to take than to discharge you from your position as Captain with the Salem Police Department."

DISCUSSION

1. Standard of Review

The Court may modify or set aside an administrative agency's final decision where the decision exceeded the agency's authority, was based upon an error of law, was unsupported by substantial evidence, or was arbitrary and capricious or otherwise not in accordance with law.

Connolly v. Suffolk County Sheriff's Dep't, 62 Mass. App. Ct. 187, 192 (2004) (citing G. L. c. 30A, § 14 (7)). Pursuant to G. L. c. 30A, § 14, it is the function of the agency rather than the Court to make findings of fact, and it is the duty of the agency rather than the Court to weigh the credibility of the witnesses. Catrone v. State Racing Comm'n, 17 Mass. App. Ct. 484, 486 (1984). The agency has the benefit of observing the witnesses, and thus is better able to make assessments as to the credibility of the testimony. Cherubino v. Bd. of Registration of Chiropractors, 403 Mass. 350, 356 (1988).

In reviewing an agency's decision, the Court is not permitted to substitute its choice for the agency's choice between two fairly conflicting views even if the Court would have decided an issue differently if the matter was before it de novo. Connolly, 62 Mass. App. Ct. at 192-193 (citing Embers of Salisbury, Inc. v. Alcoholic Bevs. Control Comm'n, 401 Mass. 526, 529 (1988)).

2. Civil Service Commission's Dismissal of Plaintiff's Civil Service Appeal

A. Substantial Evidence

Murphy argues that the Commission's decision that his termination was justified was not supported by substantial evidence.

In determining whether an agency's decision is supported by substantial evidence, this Court must take into account the entire administrative record, and also take into account "whatever in the record fairly detracts from the weight of the evidence." New Boston Garden Corp. v. Bd. of Assessors of Boston, 383 Mass. 456, 466 (1981). The substantial evidence standard is a "test of rational probability." Cobble v. Comm'r of Dep't of Social Servs., 430 Mass. 385, 390 (1999). Substantial evidence is evidence that "a reasonable mind might accept as

adequate to support a conclusion." Bournewood Hosp., Inc. v. Mass. Comm'n Against Discrimination, 371 Mass. 303, 317 (1976) (citing G. L. c. 30A, § 1 (6)).

"When determining whether an agency decision is supported by substantial evidence, the standard of review is highly deferential to the agency." Connolly, 62 Mass. App. Ct. at 193 (citing Hotchkiss v. State Racing Comm'n, 45 Mass. App. Ct. 684, 695 (1988)). Under this standard, this Court must uphold the Commission's conclusion unless "the evidence points to no felt or appreciable probability of the conclusion or points to an overwhelming probability of the contrary." Cobble, 430 Mass. at 390-391.

In this case, the administrative record of Murphy's appeal to the Commission is contained in three volumes spanning more than eight hundred pages, and three volumes of transcribed witnesses' testimony. More than fifty percent of the Commissioner's findings of fact are based either on testimony, or on both testimony and an exhibit. The fact finder had the duty to determine which witnesses were credible and which were not. Catrone, 17 Mass. App. Ct. at 486. These findings of fact indicate that Murphy conducted a campaign of coercion and retaliation against Chief St. Pierre, which had the potential to impact the daily operations of the Salem Police Department by undermining the hierarchy command authority.

The Commissioner concluded that Murphy's long, distinguished career did not excuse his "willful, wanton attempt to discredit Salem Police Chief Robert St. Pierre." The Commissioner stated Murphy "remains unrepentant, recalling his self-proclaimed investigation against Chief St. Pierre with a sense of misplaced pride." The Commissioner further stated, "Murphy's judgment became permanently clouded as a result of issues related to his daughter Patricia, who joined the Salem Police Department . . . in 1996" Murphy, "clearly angered" by the first paid

administrative leave resulting from his actions surrounding his daughter, "used his time on paid leave to lay the groundwork for the planned character assassination of Chief St. Pierre."

The Commissioner stated that Murphy "made baseless allegations, including the almost comical charge that the Chief was involved in illegal gambling." Additionally, that Murphy,

"as part of his campaign against the Chief, accessed departmental records for the sole purpose of retaliating against the Chief, refused to follow orders to return documents taken from the Internal Investigation Division, filed a baseless criminal complaint against the Chief for the sole purpose of discrediting his reputation, and attempted to threaten and coerce the Mayor and Chief of Police."

The Commissioner further stated, "[p]revious Commission decisions have well established that officers must comport themselves in a professional and exemplary manner and comply with the orders of their superior officers in order to ensure the efficient and orderly operation of a paramilitary organization."

The Commission's decision is supported by evidence in the record that demonstrates that Murphy's conduct violated section I, part D, par. 8; part E, par. 7; part F, pars. 30, 35; and part G, pars. 1, 10, 12, 18, of the Salem Police Department Rules and Regulations governing police officers' conduct. The decision is one that a reasonable mind would accept as adequate based on the evidence in the record. See Bournewood Hosp., Inc., 371 Mass. at 317. In other words, there is no evidence which "points to no felt or appreciable probability of the conclusion, or points to an overwhelming probability of the contrary." See Cobble, 430 Mass. at 390-391.

B. Arbitrary and Capricious

Murphy argues that the Commission's decision was arbitrary and capricious. Murphy also argues that the city committed procedural violations when it suspended him with pay and without notice of allegations against him on June 2, 2003, making the city's actions arbitrary and

capricious.

First, this Court will address Murphy's argument concerning procedural violations made by the city. This Court reviews the final decision of the Civil Service Commission, and not the acts of the appointing authority. Connolly, 62 Mass. App. Ct. at 192. Murphy argued to the Commission that the city failed to comply with the provisions of G. L. c. 31, § 41, when he was given the letter on June 2, 2003 placing him on paid leave because the letter did not include the contemplated action, specific reasons for such action, or a copy of G. L. c. 31, §§ 41 - 45.

The Commissioner found that there were no procedural violations because Murphy was placed on paid leave pending an internal investigation to determine if any disciplinary action was necessary. The Commissioner stated,

"Further, the fact that the Appointing Authority referred to the paid administrative leave, for which the Appellant was notified on June 2, 2003 as a paid suspension is of no import. Chapter 31 does not limit an Appointing Authority's ability to temporarily place an employee on paid leave pending an internal investigation, regardless of whether the leave is referred to as paid administrative leave or a paid suspension."

Additionally, once the investigation was completed, Murphy was given all of the statutorily-required procedural protections when he was given formal notice of disciplinary action on August 8, 2003. The written notice of August 8, 2003, from the Mayor to Murphy informed him of the planned disciplinary hearing to "determine what disciplinary action, if any, that I should take, up to and including your discharge from your position." The letter also stated, "for a full explanation of your rights, please find enclosed copies of G. L. c. 31, §§ 41-45." The letter further outlined ten allegations against Murphy.

The Commissioner also found that Murphy's procedural due process rights were not prejudiced when the Chief delegated his duties as the Appointing Authority to the Mayor on June

2, 2003, in matters relating to Murphy's actions. The Commissioner concluded that the "Chief's decision was clearly meant to ensure [Murphy's] right to a fair and unbiased investigation and subsequent disciplinary hearing."

The Civil Service Commission is required to restore an aggrieved person if the procedural requirements of G. L. c. 31, § 41 are not followed by the appointing authority and the person's rights have been prejudiced. G. L. c. 31, § 42. This Court finds no error of law by the Commission in its determination that Murphy's procedural rights were not prejudiced upon which to set aside or modify the Commission's decision. Connolly, 62 Mass. App. Ct. at 192.

This Court next turns to Murphy's other argument, that the Commission acted arbitrarily or capriciously in making its final decision. The more deferential, arbitrary or capricious standard, requires only that there be a rational basis for the decision. Attorney Gen. v. Sheriff of Worcester County, 382 Mass. 57, 62 (1980). "A decision is arbitrary or capricious when it lacks any rational explanation that reasonable persons might support." Cambridge v. Civ. Serv. Comm'n, 43 Mass. App. Ct. 300, 303 (1997). Further, a decision made without evidentiary support is arbitrary and capricious. Mass. Gen. Hosp. v. Comm'r of Pub. Welfare, 350 Mass. 712, 720 (1966). In reviewing an agency decision the Court should be slow to decide that an agency has acted unreasonably or arbitrarily, and "should cast about to discover, if possible, some ground which reasonable [persons] might deem proper on which action can rest." Cotter v. Chelsea, 329 Mass. 314, 318 (1952).

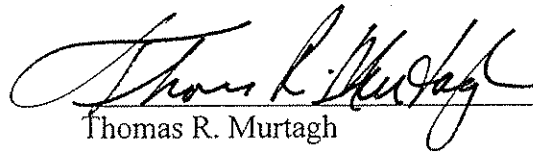
In this case, the Commission decision is not arbitrary or capricious. Rather, it is based on a rational explanation of the evidence presented in three days of hearings and found in the Commission's findings of fact. As previously explained, that Murphy conducted a campaign of

coercion and retaliation against Chief St. Pierre is amply supported by the record. See

Cambridge, 43 Mass. App. Ct. at 303. Thus, the Commission's decision upholding Murphy's termination based on this campaign of coercion and retaliation is not arbitrary or capricious because there is some ground upon which reasonable persons would deem proper. See Mass. Gen. Hosp., 350 Mass. at 720; Cotter, 329 Mass. at 318.

ORDER

It is therefore **ORDERED** that the plaintiff, Paul R. Murphy's, motion for judgment on the pleadings in his appeal of the Civil Service Commission's final decision be **DENIED**. It is further **ORDERED** that the Civil Service Commission's final decision be **AFFIRMED**.


Thomas R. Murtagh
Justice of the Superior Court

DATED: June 26, 2008